

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

12 Misc. 00115 (JSR)

In re:

MADOFF SECURITIES

PERTAINS TO THE FOLLOWING CASE:

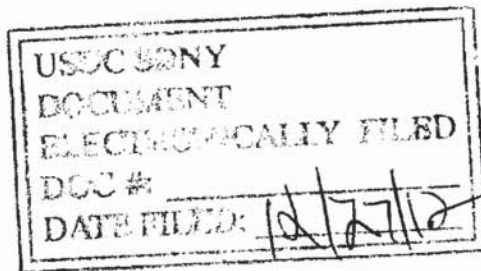
IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BEACON ASSOCIATES LLC I, et al.

Defendants.



Adv. Pro. No. 10-05356 (BRL)

12 Civ. 02310 (JSR)

STIPULATION AND ORDER

JED S. RAKOFF, U.S.D.J.

WHEREAS, Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA") and the estate of Bernard L. Madoff ("Madoff"), filed a complaint on December 8, 2010 and an amended complaint (the "Amended Complaint") on July 13, 2011 in the Bankruptcy Court in the above-captioned adversary proceeding (the "Adversary Proceeding");

WHEREAS, defendants Beacon Associates LLC I, Beacon Associates LLC II, Beacon Associates LLC, Beacon Associates Management Corporation, Andover Associates, L.P., Andover Associates LLC I, Andover Associates (QP) LLC, Andover Associates LLC II, Andover Associates Management Corporation, Joel Danzinger, Harris Markhoff, J.P. Jeanneret Associates, Inc., John Jeanneret, Paul Perry, Ivy Asset Management LLC, Lawrence Simon, Howard Wohl, Ivy Birchwood Associates, L.P., Ivy Enhanced Income Fund, Ivy Regency Fund, L.P., Ivy Rosewood Associates, L.P., Ivy Rosewood Offshore Fund, Ltd., Birchwood Associates Management LLC, Rosewood Associates Management LLC, Ivy International LLC and Regency Asset Management LLC (collectively, the “Defendants”¹) filed a motion to withdraw the Bankruptcy Court reference (the “Withdrawal Motion”) on March 28, 2012, arguing, inter alia, that issues related to (i) whether under *Stern v. Marshall* the Trustee’s claims invoke the judicial power of the United States and must proceed before an Article III judge; (ii) whether withdrawals from BLMIS accounts would fall within the Section 546(e) safe harbor; (iii) whether the Trustee’s claims would require that he show that Defendants were “willfully blind” to Madoff’s fraud in order to establish that the Defendants acted without “good faith”; and (iv) whether the Defendants’ customer claims may be disallowed under 11 U.S.C. § 502(d) or equitably subordinated in the context of a SIPA case raised questions of non-bankruptcy law;

WHEREAS, the Defendants’ Withdrawal Motion is subject to the consolidated briefing orders entered by this Court on the merits of certain issues relating to *Stern v. Marshall* pursuant to the Order dated April 13, 2012, No. 12 Civ. 0115 (S.D.N.Y. April 13, 2012) (ECF No. 4); 11 U.S.C. § 546(e) pursuant to the Order dated May 15, 2012, No. 12 Civ. 0115 (S.D.N.Y. May 16, 2012) (ECF No. 119); 11 U.S.C. § 502(d) pursuant to the Order dated June 1, 2012, No. 12 Civ. 0115

¹ Defendants Oakwood Associates and Oakwood Associates Management are dissolved as of the date hereof, but they have been included as “Defendants” for purposes of this Stipulation and Order, and they were included as “Settling Defendants” in the Settlement Agreement.

(S.D.N.Y. June 1, 2012) (ECF No. 155); and Good Faith under 11 U.S.C. § 548(c) or 11 U.S.C. § 550(b) pursuant to the Order dated June 23, 2012, No. 12 Civ. 0115 (S.D.N.Y. June 25, 2012) (ECF No. 197) (collectively, the “Consolidated Briefing Orders”);

WHEREAS, on October 12, 2012, the Trustee entered into a Settlement Agreement with the Defendants to fully resolve all matters related to the Adversary Proceeding;

WHEREAS, the Settlement Agreement was approved by the Bankruptcy Court on December 4, 2012, and the Closing (including all payments contemplated to be made at Closing) has occurred;

WHEREAS, in consideration of the settlement of the Adversary Proceeding and as contemplated by Section 11 of the Settlement Agreement, the Defendants agree to withdraw the Withdrawal Motion, will not participate in the litigations and appeals of the Consolidated Briefing Orders, and will not pursue any other litigation involving the Trustee arising out of or relating to BLMIS (except for certain limited exceptions expressly permitted by the terms of the Settlement Agreement), including the “section 546(e) appeal” or any further appeal to the Second Circuit, or any consolidated briefing before this Court, where such litigations involve the Adversary Proceeding;

WHEREAS, the Defendants have not answered the Trustee’s Amended Complaint and no other motions remain pending in either the Bankruptcy Court or the District Court;

BASED ON THE FOREGOING, IT IS HEREBY:

ORDERED, that the Withdrawal Motion is hereby withdrawn and the Clerk of the Court is ordered to close item number one on the dockets of 12 Civ. 02310.

ORDERED, that the Defendants shall no longer be subject to the Consolidated Briefing Orders or any other consolidated briefing currently or previously before this Court which includes, or could be argued to include, any issues relevant or related to the Adversary Proceeding.

ORDERED, that the Defendants shall hereby be deemed removed from the relevant Exhibits to the Consolidated Briefing Orders and all associated motions, memoranda, or other filings, joinders to same, orders entered by this Court, and/or appeals taken by any parties, in each case in connection with the issues raised by the Consolidated Briefing Orders.

ORDERED, that the docket of 12 Civ. 02310 is hereby closed, and all matters arising therein are deemed dismissed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Dated: New York, New York
December 21, 2012

By: /s/ Howard L. Simon
Howard L. Simon (hsimon@windelsmarx.com)
Clark E. Alpert (calpert@windelsmarx.com)
Kim M. Longo (klongo@windelsmarx.com)
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, New York 10019
Tel: (212) 237-1000
Fax: (212) 262-1215

*Special Counsel to Irving H. Picard, Trustee for
the SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC*

Dated: New York, New York
December 18, 2012

By: /s/ Jeffrey A. Rosenthal
Lewis J. Liman (lliman@cgsh.com)
Jeffrey A. Rosenthal (jrosenthal@cgsh.com)
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Tel.: (212) 225-2000
Fax: (212) 225-3999

*Attorneys for Ivy Asset Management LLC,
Lawrence Simon, Howard Wohl, Ivy Birchwood
Associates, L.P., Ivy Enhanced Income Fund,
Ivy Regency Fund, L.P., Ivy Rosewood
Associates, L.P., Ivy Rosewood Offshore Fund,
Ltd., Birchwood Associates Management, LLC,
Rosewood Associates Management, LLC, Ivy
International, LLC, and Regency Asset
Management, LLC*

Dated: New York, New York
December 21, 2012

By: /s/ Tab K. Rosenfeld
Tab K. Rosenfeld (tab@rosenfeldlaw.com)
Steven Kaplan (steve@rosenfeldlaw.com)
Rosenfeld & Kaplan, LLP
1180 Avenue of the Americas
Suite 1920
New York, New York 10036
Tel: (212) 682-1400
Fax: (212) 682-1100

*Attorneys for Beacon Associates Management
Corporation, Andover Associates Management
Corporation, Joel Danziger, and Harris
Markhoff*

Dated: New York, New York
December 20, 2012

By: /s/ Frederick E. Schmidt, Jr.
Arthur Jakoby (ajakoby@herrick.com)
Frederick E. Schmidt, Jr.
(eschmidt@herrick.com)
Herrick, Feinstein, LLP
2 Park Avenue
New York, New York 10016
Tel: (212) 592-1400
Fax: (212) 592-1500

*Attorneys for Beacon Associates LLC I, Beacon
Associates LLC II, Beacon Associates LLC,
Andover Associates, L.P., Andover Associates
LLC I, Andover Associates (QP) LLC, and
Andover Associates LLC II*

Dated: Boston, Massachusetts
December 20, 2012

By: /s/ Brian Whiteley
Brian Whiteley (bwhiteley@hblaw.com)
Carolyn Marcotte (cmarcotte@hblaw.com)
Hiscock & Barclay, LLP
One International Place, 26th Floor
Boston, MA 02110
Tel: (617) 274-2900
Fax: (617) 722-6003

-and-

John M. Nichols (jnichols@hblaw.com)
Hiscock & Barclay, LLP
One Park Place
300 South State Street
Syracuse, NY 13202

*Attorneys for J.P. Jeanneret Associates, Inc.,
John Jeanneret, and Paul Perry*

Dated: Washington, D.C.
December 21, 2012

By: /s/ Kevin H. Bell
Josephine Wang
E-mail: jwang@sipc.org
Kevin H. Bell
E-mail: kbell@sipc.org
Lauren T. Attard
E-mail: lattard@sipc.org
SECURITIES INVESTOR PROTECTION
CORPORATION
805 15th Street, N.W. Suite 800
Washington, D.C. 20005
Telephone: (202) 371-8300

SO ORDERED

Dated: 12/26/12
New York, New York


JED S. RAKOFF, U.S.D.J.